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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,757	12/11/2003	James Parks	TN-09667D	1995

7590 12/10/2004

Black & Decker Inc.
701 E. Joppa Road, TW-199
Towson, MD 21286

EXAMINER

PETERSON, KENNETH E

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,757

Applicant(s)

PARKS ET AL

Examiner

Kenneth E Peterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26,28 and 47-52 is/are pending in the application.
- 4a) Of the above claim(s) 47-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner:
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 26 is rejected under 35 U.S.C. 102(b) as being anticipated by Schnitzer '700, who shows a fence (3,5) with all of the recited limitations including a handle (37), a rod (21), a first cam (23) at a first end of the rod, and a second cam (24) at the second end of the rod. Schnitzer shows first and second movable plates (31,31), which are considered to be separate since there is a third plate (25) between them. The first and second plates can contact the cams as seen in figure 2, and are movable transversely to the fence beam as discussed in column 4 of page 2, and thus are movable into and out of engagement with the fence beam.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schnitzer '700, who shows a fence with most of the recited limitations as set forth above.

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If it interpreted that Schnitzer's first and second plates are not "separate", then it is noted that Schnitzer's plates functionally works at two separate locations adjacent each end of the rod. Whether or not Schnitzer's plates are one piece or two is a simple choice that can be made by one of ordinary skill in the art. See In re Lockhart, 90 USPQ 214 for the courts opinion on the unity or diversity of parts. In Lockhart, the court said "*It appears to us that the unity or diversity of parts would depend more upon the choice of the manufacturer, and the convenience and availability of the machines and tools necessary.....than on any inventive concept*". In this case, it would have been obvious to one of ordinary skill in the art to have modified Schnitzer by making the plates more like two plates, since the device works on two sides of the handle anyway, since the operation of the device would not be modified, and since the courts have ruled such changes to be a non-inventive modifications.

In regards to claim 28, Schnitzer's rod (21) is circular rather than square. Examiner takes Official Notice that it is well known to make such a rod to have square portions, in order to insure co-rotation with joining parts. It would have been obvious to one of ordinary skill in the art to have modified Schnitzer by making his rod have a square cross section, as is well known, in order to insure co-rotation with joining parts.

5. Applicant's arguments have been fully considered but are moot in view of the new ground of rejection.

It is noted that Applicant has not argued the Examiner's taking of Official Notice in regards to claim 28. This taking is now considered to be fact as per MPEP 2144.03.

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Made of record but not relied on are several patents showing pertinent fence camming systems.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ken Peterson whose telephone number is 571-272-4512. The examiner can normally be reached on Monday thru Thursday between 7am and 5pm.

In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9306. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514.

kp

December 8, 2004



KENNETH E. PETERSON
PRIMARY EXAMINER